

From: Michael Roberts
To: Microsoft ATR
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Subject: Microsoft Settlement

I've just recently taken the time to research the proposed settlement with Microsoft, after hearing a great deal of negative comment, and I am quite sorry to say that the settlement is even more flawed than I had imagined possible. I realize that Mr. Ashcroft may even *believe* his statement that this settlement is not a sell-out, but to give him the benefit of that doubt, I am forced to assume that Mr. Ashcroft has no conception whatsoever of the actual problems involved in this case.

Last time the DoJ tangled with Microsoft, you brought out a settlement which was far too restricted, in the sense that it enumerated specific activities from which Microsoft was prohibited, and allowed Microsoft to pursue any number of closely related but legally separate anti-competitive behaviors -- which, of course, they did. It was my hope that you had learned from that mistake, and yet I see that you have not.

Let's take a quick example: you define Microsoft's duties to publish APIs in such a way that they do not exclude competitive activity, which sounds great -- yet you define APIs in such a restrictive way that it is frankly incredible from a technical standpoint. You limit the term "API" to mean interaction between *specific* operating systems (the list of which already excludes two of Microsoft's newly planned products) with *specific* middleware products -- the list of which excludes Microsoft's most significant middleware: SQL Server and Outlook are not in the list. Windows *Media* Player is in the list, but Office products are not. Forgive my bluntness, but I simply cannot believe that this is an oversight. No-one could possibly be this stupid. As the settlement is written, this clause will hinder Microsoft's anti-competitive behavior for about six months; by the end of 2002 they will be as free to quash all competition as they have been since riding roughshod over the 1994 consent decree.

I'm sorry, I'm trying to be polite here, but this proposed settlement is so hopelessly flawed that it should by all rights be a public laughingstock. Unfortunately the public doesn't seem to have the technical knowledge required to understand the flaws -- but I do. And this settlement, if accepted as it stands, will constitute a direct threat to my business.

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